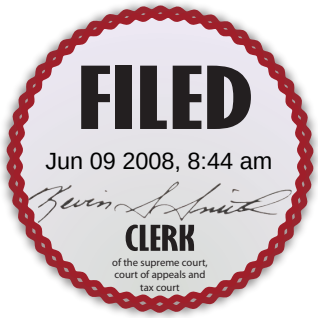

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IN THE
COURT OF APPEALS OF INDIANA

MARCEAU L. LEBON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0709-CR-814
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0705-FB-06

JUNE 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Marceau Lebon appeals his sentence with regard to his conviction of burglary as a Class B felony. Ind. Code § 35-43-2-1.

We affirm.

ISSUES

Lebon presents two issues which we restate as:

I. Whether the trial court abused its discretion with regard to mitigating and aggravating circumstances.

II. Whether the sentence is inappropriate.

FACTS AND PROCEDURAL HISTORY

On May 1, 2007, Lebon broke into a car at a residence. Inside the car, Lebon found keys, which he used to enter the residence and steal a purse. Lebon then used a credit card he found in the purse to purchase assorted merchandise. Based upon this incident, Lebon was charged with burglary as a Class B felony; habitual offender; theft as a Class D felony; and fraud as a Class D felony.

Lebon pleaded guilty to burglary, and the State dismissed the remaining charges. The trial court sentenced Lebon to fifteen years, and Lebon now appeals his sentence.

DISCUSSION AND DECISION

I. DISCRETION OF TRIAL COURT

Lebon first contends that the trial court abused its discretion when it failed to recognize his expression of remorse as a mitigating factor and assigned undue weight to the aggravating factor of his criminal history. As an initial matter, we note that prior to

the commission of these offenses, our state legislature amended Indiana's sentencing scheme with regard to felony offenses, effective April 25, 2005. Under the new sentencing regime, a court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). Although this statute allows for the imposition of any sentence within the statutory range without regard to mitigating or aggravating circumstances, it is worth noting that the statute does not prohibit the trial court from identifying facts in mitigation or aggravation. *Anglemyer v. State*, 868 N.E.2d 482, 489 (Ind. 2007), *reh'g granted, decision clarified on other grounds*, 875 N.E.2d 218 (Ind. 2007).

Lebon has waived his claim regarding consideration of his remorse as a mitigating factor. Although he apologized to the victims during his sentencing hearing, he failed to ask the court to consider remorse as a mitigator. Lebon is precluded from advancing this claim for the first time on appeal; thus, his claim is waived. *See Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005) (determining that defendant waived claim on appeal because he failed to raise proposed mitigators at trial court level); *see also Anglemyer*, 868 N.E.2d at 492 (precluding defendant from advancing as mitigating circumstance, for first time on appeal, claim that trial court should have considered his remorse).

Lebon also asserts that the trial court allocated excessive weight to his criminal history as an aggravating circumstance. The weight or value assigned to any aggravating factors that the trial court may properly find is not subject to review for abuse of the trial court's discretion. *Anglemyer*, 868 N.E.2d at 491. Therefore, we are prohibited from

reviewing the weight assigned to this factor by the trial court. *See e.g., Southern v. State*, 878 N.E.2d 315, 323-24 (Ind. Ct. App. 2007), *trans. denied* (2008) (stating that court on appeal cannot review defendant's argument that trial court assigned too much weight to his criminal record as aggravating factor).

II. INAPPROPRIATE SENTENCE

Under Article VII, Section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences. However, we will not revise the sentence imposed unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B).

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Lebon pleaded guilty to burglary as a Class B felony. Ind. Code § 35-50-2-5 provides, in pertinent part: "A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." The trial court sentenced Lebon to fifteen (15) years. Lebon's sentence is more than the advisory sentence for a Class B felony but less than the maximum. Although there was no violence involved in the commission of this offense, it does involve the intrusion into a family's home and the taking of personal items while the victims were asleep in the home.

Our examination of the character of the offender discloses that Lebon has an extensive criminal history, commencing with a finding of delinquency as a juvenile for an act of auto theft in 1988. Lebon was also adjudicated as a juvenile for auto theft in 1993.

As an adult, he continued to commit offenses on a steady basis: escape in 1994; trafficking with an inmate and criminal conversion in 1998; receiving stolen property in 2000; fraud in 2001; auto theft and receiving stolen property in 2003, and attempted theft in 2004. In addition, at the time of sentencing on the instant offense, Lebon had charges pending for theft, driving while suspended with a prior driving while suspended, license plate not illuminated, and maximum speed limit. Lebon, who was only thirty (30) years old at the time he was sentenced, had accumulated convictions for six felonies and two misdemeanors. Further, Lebon committed new offenses while on probation.

Lebon has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494 (declaring that defendant must persuade appellate court that his sentence has met inappropriateness standard of review). Lebon has been given numerous chances at rehabilitation, and he has failed at them all. In light of Lebon's character, the sentence is not inappropriate.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that Lebon has waived his claim of remorse as a mitigating factor and that we are prohibited from reviewing the weight assigned by the trial court to the aggravating factor of criminal history. Finally, we conclude that Lebon's sentence is not inappropriate.

Affirmed.

DARDEN, J., and BARNES, J., concur.